

LAND BOARD AGENDA ITEM

1208-5

December 2008

Request for Final Approval of the DNRC/Goguen Land Exchange

BACKGROUND

The Department of Natural Resources and Conservation (DNRC) requests final approval from the Land Board for a land exchange with Michael Goguen. The land proposed for exchange is located in Flathead County and involves exchanging 434.8± acres of state trust land for 601± acres, offered by Mr. Goguen, consisting of 569.7± acres referred to as the Lupfer Parcel; 30± acres referred to as the Livermore Flats Parcel and an improved commercial property in the City of Whitefish referred to as the Commercial Parcel (see attached map). Public Building is the trust beneficiary of the DNRC-managed land proposed for exchange.

The exchange was proposed by Michael Goguen as a means of consolidating his private land ownership. The proposal was developed giving consideration to some goals outlined in the Whitefish Neighborhood Plan (WNP):

- ❖ The proposal includes exchanging the mineral rights on the Livermore Flats parcel for equally-valued mineral rights on the State parcel (approximately 30 acres pending review of mineral potential).
- ❖ The proposal includes placing a deed restriction limiting the parcel to two (2) single family residences. The trust land parcel is valued under the exchange at full value, therefore the trust beneficiary (Public Buildings) is made whole. The development restriction is consistent with the community preference identified in the WNP.
- ❖ The proposal would relocate an existing pedestrian public access corridor through the State Trust land parcel and construct a trail as proposed in the WNP. The trail easement transaction is between the state and the City of Whitefish. The proposal would also create a recreational trail system and associated amenities on the Lupfer acquisition parcel. Both would be funded by Mr. Goguen and consummated with a permanent easement transaction with the City of Whitefish.

The Lupfer parcel that the State would acquire in the exchange has an existing conservation easement. The easement limits development of the parcel to 3 single family residences and timber management would be limited to the production and maintenance of old growth. The Livermore Flats parcel was added to address the consolidation criteria and the commercial parcel was added to address the revenue criteria.

PUBLIC INVOLVEMENT PROCESS AND RESULTS

Mr. Goguen first proposed the land exchange to the DNRC in a Letter of Intent dated June 17, 2006. An open house was held by the DNRC on August 30, 2006 that presented the proposed Goguen land exchange in conjunction with two other land use proposals under consideration: the Trail Runs Through It (proponents: City of Whitefish and Flathead Gateway Partners) and Britell's Point of Pines subdivision sanitation system and access (proponents: private landowners). The three proposals were presented together as part of Project Coordination under the WNP. Public comment for the three land use proposals was solicited in a public comment period from August 30 through September 13, 2006.

The original application for the Goguen land exchange was officially submitted to the DNRC in February 2007. At that time, the proposed Goguen land exchange involved only two parcels: the Lupfer parcel (Goguen) and the State Trust parcel (State). Following an appraisal and prior to the official scoping period for the Goguen land exchange, two additional parcels were added by Mr. Goguen: the Livermore Flats parcel and the Commercial parcel.

Public comment related specifically to the Goguen land exchange was solicited in a scoping period from December 16, 2007 through January 19, 2008 and included:

- Posting of the scoping letter on the DNRC website from December 13, 2007 to present;
- Legal notice in the Whitefish Pilot on December 20 and December 27, 2007;
- Legal notice in the Daily Interlake on December 16, December 19, December 23 and December 26, 2007;
- Scoping letter mailed to approximately 180 interested parties on December 20, 2007' and
- A clarification letter and map mailed to the same interested parties on December 21, 2007.

Thirty responses were received. The majority of the responses were positive, with questions or concerns centered around all seven (7) of the land exchange criteria, a contention that the exchange would create negative impacts to those living on or traveling on Lupfer Road (and adjacent properties), and concerns with how recreational opportunities may be affected. These issues are addressed the MEPA analysis. Mr. Goguen will enter into an agreement with the state or the county to secure a bond for annual dust abatement and road maintenance with consideration to pave the road in the future.

To keep the public informed about the evolution of the proposal and solicit additional comments during the environmental analysis process, a public information website was developed and comments were requested and accepted during a 30-day comment period from October 26 through November 24, 2008. The web site experienced 400 hits during this timeframe and eighteen comments were received. The results of the web-based public comment period were not substantially different than comments received during the initial scoping period and were incorporated into the final project design and analyzed in the Environmental Assessment prepared by DNRC and its third-party contractor, PBS&J.

On December 2, 2008, DNRC conducted a formal public hearing in Kalispell, Montana. Ten members of the public attended the Hearing with six presenting testimony. We also received written comments from six individuals. All of the comments presented or submitted were in favor of the proposal.

The Environmental Analysis and Finding were completed on December 12, 2008.

EXCHANGE CRITERIA ANALYSIS

Preliminary review of the exchange parcels document how the land exchange meets or exceeds all of the relevant criteria for a land exchange as set forth in the LAND EXCHANGE POLICY revised December 20, 2004 by the Montana Board of Land Commissioners:

1. EQUAL OR GREATER VALUE

The Proposal would exchange 572 acres of private land with a conservation easement for 440 acres of State Trust land with development restrictions. Below is a breakdown of the appraised values.

State 434.757-Acre		
As Is, Without Restrictions:	\$11,785/Acre or \$5,120,000 total	
With Restrictions on No. of Building Sites:	\$11,785/Acre or \$5,120,000 total	
As Proposed, 392.757-Acres	\$11,785/Acre or \$4,630,000 total	
As Proposed, 21-Acres	\$22,000/Acre or \$460,000 total	
As Proposed, 21-Acres	\$22,000/Acre or \$460,000 total	
	\$5,550,000 total	\$5,550,000 State Land
Goguen Lupfer Parcel 569.7+/-		
As is, One Parcel:	7,447/Acre or \$4,240,000 total	
As Proposed, 512.3-Acres	7,447/Acre or \$3,820,000 total	
As Proposed, 32-Acres	5,000/Acre or \$480,000 total	
As Proposed, 25.4-Acres	\$16,600/Acre or \$420,000 total	
	\$4,720,000 total	
Goguen Livermore Flats 30-Acre Parcel		
As Is:	17,000/Acre or \$510,000 total	
Goguen Commercial Property (needs inspection items mitigated prior to closing)		
As Is:	\$360,000 total	
		\$5,590,000 Goguen Land

The subdivision of the Lupfer Parcel will not be complete prior to closing. An agreement will be developed regarding the development of the Lupfer Parcel. The agreement will stipulate the necessary items for the development of the property into three (3) lots. The state will hold a bond sufficient for the development.

Meets criteria and exceeds criteria

2. *STATE LAND BORDERING ON NAVIGABLE LAKES AND STREAMS*

Neither parcel involved in the exchange directly borders a navigable and/or public-use waterway. The northern boundary of the State parcel is within 505 feet of Beaver Lake. As currently proposed, the exchange would not block public access to the Beaver Lakes fishing-access site.

Meets criteria

3. *EQUAL OR GREATER INCOME TO THE TRUST*

The Lupfer parcel has a conservation easement; revenue-generating opportunities include timber harvesting, limited development-related income (planned development of two single-family residences) and income from dispersed/trail-related non-motorized recreation. The Livermore Flats parcel has primarily dry-land hay revenue-generating opportunities. The commercial parcel has a commercial lease that will be extended through 2020 upon approval of the exchange.

The State parcel has revenue-generating opportunities include timber harvesting, limited development-related income (planned development of two single-family residences) and income from dispersed/trail-related non-motorized recreation.

Using the agency's standard net-present-value revenue analysis method, the revenue rate-of-return on the state parcel would be approximately 4± %. The revenue rate-of-return for the Goguen parcels would be approximately 6±%.

Meets criteria and exceeds criteria

4. *EQUAL OR GREATER ACREAGE*

The proposal involves exchanging 434.8± acres of State Trust land for 601+ acres consisting of 569.7± acres referred to as the Lupfer Parcel; 30± acres referred to as the Livermore Flats Parcel and an improved commercial property in the City of Whitefish referred to as Commercial Parcel collectively offered by Mr. Goguen (see attached maps). Public Building is the trust beneficiary.

Meets criteria and exceeds criteria

5. *CONSOLIDATION OF STATE LAND*

The State parcel proposed for exchange is connected to Stillwater State Forest on its northwestern boundary. The Stillwater State Forest is a block of approximately 93,000 contiguous acres of classified State forestland.

The northeastern boundary of the Lupfer parcel proposed for exchange is adjacent to the Stillwater State Forest boundary and the Livermore Flats parcel consolidates other State property.

Meets criteria

6. *POTENTIAL FOR LONG-TERM APPRECIATION*

The potential for long-term appreciation was determined to be equal by the property appraisal.

Meets criteria

7. ACCESS

State parcel – The State has legal access from both the north and south sides of the property. General public access is limited to nonmotorized travel from the south on Skyles-to-Beaver Road. The State parcel will be part of the Trail Runs Through It recreational trail system for the City of Whitefish, regardless of exchange status.

Goguen Parcel – Lupfer Road, a Flathead County Road that intersects highway 93, accesses this parcel. The parcel has a system of six low-standard dirt roads which due to steep grades and poor drainage, portions of these roads would likely be restricted to nonmotorized public use. An agreement will be developed regarding the development of the infrastructure associated with the Lupfer parcel and the state will hold a bond sufficient for construction.

RECREATIONAL ACCESS:

Construction of the trail systems through the State and Goguen property will be accomplished by Mr. Goguen after the land exchange has been completed. The State will hold a bond for the construction of the trail system through the Goguen and State property prior to closing of the exchange.

The City of Whitefish has made application for a trail easement across the 440 parcel. If the easement is approved by the Land Board, the easement will be issued to the City of Whitefish prior to transferring the state trust land to Mr. Goguen.

Meets criteria

AGENCY RECOMMENDATIONS

The above evaluation of the land exchange criteria of the proposed Mike Goguen land exchange finds that the proposal either meets, or exceeds the Land Exchange Policy Criteria. The Department recommends granting final approval to complete the exchange conditioned on the agreements, bonds, easements, etc., outlined in the report and table below.

Easements		
Construction of trail system and parking lots	After exchange has been completed	State and Goguen develop agreement and state will hold a bond for construction
Land Board approve and state grant a trail easement across trust land to City of Whitefish.	Prior to exchange	State and Goguen develop agreement and state will hold a bond for construction
Development of Lupfer Parcel		
Complete surveys, engineering of infrastructure etc. and construct the necessary infrastructure to complete the development of the property	After exchange has been completed	State and Goguen develop agreement and state will hold a bond for development and construction
Restrictions on State Parcel		
Place a perpetual restrictive covenant and condition, which shall run with the land: that no more than two single-family dwellings shall be constructed upon the State land to be exchanged.	To be included in the Grant Deed from the State to Goguen as a deed restriction.	
Public issues		

Mitigate traffic dust to the Lupfer Parcel on the Lupfer road.	After exchange has been completed	State and Goguen develop agreement and state will hold a bond for mitigation.
City of Whitefish will incorporate the Lupfer trail system into the trail land use license with the State.		
Commercial Property		
Several items were noted in the property inspection that was deficient.	Items to be completed prior to exchange	